

**BEFORE THE MASSACHUSETTS  
DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY**

In the Matter of

Petition of Charter Fiberlink MA-CCO, LLC  
for Arbitration of an Amendment to the  
Interconnection Agreement Between Verizon-  
Massachusetts, Inc. and Charter Fiberlink MA-  
CCO, LLC Pursuant to Section 252 of the  
Communications Act of 1934, as Amended

D.T.E. Docket 06-56

**RESPONSE OF CHARTER FIBERLINK MA-CCO, LLC TO  
THE DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY'S  
FIRST SET OF INFORMATION REQUESTS**

Charter Fiberlink MA-CCO, LLC (Charter) hereby provides responses to the Department of Telecommunications and Energy's (Department) First Set of Information Requests ("Requests") to Charter.

**RESERVATION OF RIGHTS**

Charter reserves the right to supplement or modify its objections and responses, and to present further information and produce additional documents. Notwithstanding this reservation, Charter objects to the Requests to the extent they seek to impose on Charter an obligation to supplement these responses except to the extent required by applicable Massachusetts law.

## **GENERAL OBJECTIONS**

1. Charter objects to these Requests to the extent they purport to impose any different or additional obligations from those imposed under applicable law.

2. Charter objects to these Requests to the extent they seek documents or information protected by the attorney client privilege, the attorney work product doctrine or any other applicable privileges or doctrines. Any inadvertent disclosure of such privileged documents or information shall not be deemed to be a waiver by Charter of the attorney-client privilege, work product doctrine, or other applicable privileges or doctrines. Charter further objects to any request to the extent it purports to impose overbroad or unduly burdensome reporting and documentation requirements regarding privileged information.

3. Charter objects to each Request to the extent that it is vague and ambiguous, particularly to the extent that it uses terms that are vaguely defined or not defined in the Request or the Definitions and Instructions.

4. Charter objects to these Requests to the extent they seek confidential or competitively sensitive business, financial, or other proprietary documents, trade secrets, or information or confidential information protected under interconnection agreements or 47 U.S.C. §222, belong to or in the possession of Charter. Charter further objects to the Requests to the extent they seek documents or information protected by the privacy protections of the Massachusetts or United States Constitution, or any other law, statute, or doctrine. Any confidential or proprietary documents produced by Charter are produced subject to the terms of the confidentiality agreements among the parties to this docket. The furnishing of Responses to these Requests is not intended nor should it be construed to waive Charter's right to protect from disclosure documents and information containing confidential or proprietary trade secrets or

business information. Charter reserves the right to redact, from the documents it produces or information it provides, any and all confidential or proprietary business information or trade secrets not relevant to the subject matter of this proceeding.

5. Charter objects to these Requests to the extent that they seek to impose an obligation on Charter to respond on behalf of subsidiaries, affiliates, or other persons that are not subject to the jurisdiction of the Commonwealth of Massachusetts Department of Telecommunications and Energy (the "DTE") on the grounds that such discovery is overly broad, unduly burdensome, oppressive, and not permitted by applicable discovery rules.

6. Charter objects to the extent these Requests seek information that requires complex Responses. The function of interrogatories is to pose simple question relating to a particular subject matter that may be answered by a brief categorical statement.

7. Charter has interpreted these Requests to apply to Charter's regulated intrastate operations in Massachusetts and will limit its Response accordingly. To the extent any Requests are intended to apply to matters that take place outside of the State of Massachusetts and which are not related Massachusetts intrastate operations subject to the jurisdiction of the Department, Charter objects to such Requests are irrelevant, overly broad, unduly burdensome, and oppressive.

8. Charter objects to these Requests to the extent they seek information not reasonably calculated to lead to the discovery of admissible evidence and not relevant or material to the subject matter of this Docket.

9. Charter objects to these Requests to the extent they are duplicative and overlapping, cumulative of one another, overly broad, and/or seeks Responses in a manner that is unduly burdensome, expensive, oppressive, or excessively time consuming to Charter.

10. Charter objects to the Requests to the extent they seek to obtain "all," "each," or "every" document, item, customer, or other such piece of information because such discovery is overly broad and unduly burdensome.

11. Charter objects to these Requests as overly broad and unduly burdensome to the extent they seek to have Charter create documents not in existence at the time for the Request, or to produce documents not in Charter's possession, custody or control. Charter further objects to the extent they seek an analysis, calculation, or compilation which Charter has not performed previously and which Charter objects to performing.

12. Charter objects to these Requests as overly broad and unduly burdensome to the extent they are not limited to any stated period of time, or they pertain to a stated period of time that is longer than is relevant for purposes of the issues in this docket.

13. Charter objects to each and every Request that seeks information regarding Charter's projections regarding future services, revenues, marketing strategies, equipment deployments, or other such future business plans as such requests are trade secrets and, for purposes of this case, would be highly speculative and irrelevant to the issues to be decided.

14. The objections, Response and documents produced in Response hereto, are not intended nor should be construed to waive Charter's right to object to these Requests, Responses or documents produced in Response hereto, or the subject matter of such Requests, Responses or documents, as to their competency, relevancy, materiality, privilege and admissibility as evidence for any purpose, in or at the hearing of this or any other proceeding.

15. The Responses contained herein constitute the corporate Responses of Charter and contain information gathered from a variety of sources. The designation of a person responsible for providing a Response does not constitute an admission that the information requested fails

within the scope of the person's testimony as a witness (if that person is a witness), or within the scope of this proceeding, or a waiver of any objection based on such grounds.

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**DTE-Charter 1-1** Please refer to the testimony of Mike Cornelius at page 6, lines 5-7. What does the phrase "begin to develop the arrangement" mean?

**RESPONSE:** The phrase "begin to develop the arrangement" refers to all of the initial steps involved in building a fiber meet point arrangement before Charter begins offering service in a particular market. Generally speaking, such steps include initial planning and engineering procedures (undertaken by Charter individually and in conjunction with Verizon) during initial implementation phases. These initial planning and engineering processes are then followed by network development and construction processes. Because these initial processes take time to effectuate, it is more efficient if the party seeking a fiber meet point arrangement can begin the process when it first enters a market, rather than being forced to wait until a certain amount of traffic is already being exchanged before the initial implementation work begins.

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**DTE-Charter 1-2** Please refer to the testimony of Mike Cornelius at page 6, lines 18-20. Would Charter be willing to make the "forecast concept" explicit in the contract language?

**RESPONSE:** The forecast concept, as described in Mr. Cornelius' testimony, is not required by federal law (specifically 47 USC § 251(c)) or FCC regulations as a condition to interconnecting via fiber meet point. The only condition to interconnecting via fiber meet point that is required by law is that the requested method of interconnection is technically feasible. There is no dispute that fiber meet point interconnection arrangements, generally and as discussed here, are technically feasible.

In addition, forecasts, as established by the parties' interconnection agreement and as commonly used in the industry, are non-binding documents used only for planning purposes. They are not used, or intended to be used, as a guarantee that the forecasted traffic trunk usage will occur. For that reason, the use of a forecast concept should not be tied to financial penalty provisions, as Verizon proposes. Subject to these limitations, Charter would be willing to make the "forecast concept" explicit in contract language.

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**DTE-Charter 1-3** Please refer to the testimony of Mike Cornelius at page 7, lines 9-17. Isn't Charter overstating Charter's financial incentive because establishing a meet point is a one-time cost and even if traffic volumes don't justify the one-time expense, Charter will come out ahead relative to the existing monthly costs of leasing Verizon's facilities?

**RESPONSE:** No, Charter is not overstating its incentives. It is true that establishing a meet point is cost effective for Charter because it involves only initial expenditures, rather than monthly recurring expenses associated with leasing Verizon facilities. On the other hand, it would be overly simplistic to assume that the only reason Charter is seeking a meet point is to avoid the cost of leasing facilities from Verizon. If Charter truly expected only an insignificant amount of traffic it would not commit the financial resources to build and utilize an inefficient network arrangement simply to avoid the monthly recurring expense of leasing from Verizon. Indeed, if Charter only expected an insignificant amount of traffic it could simply lease a single DS1 for significantly less than the cost of building a meet point.

The fact is, in Charter's prior experience, there are significant operational and engineering benefits associated with the use of fiber meet point arrangements. Those benefits must also be considered when evaluating Charter's incentives in requesting fiber meet point arrangements. This is, of course, consistent with the fact that the FCC has made clear that requests for interconnection need only meet one pre-condition: that the requested form of interconnection is technically feasible. And the FCC has also made clear, in 47 C.F.R. Section 51.5, that the evaluation of technical feasibility does not include a consideration of costs, economic, accounting, billing, space, or site concerns.

In fact, extending the time in which Charter can establish a meet point benefits Verizon, because that situation requires Charter to continue leasing facilities from Verizon (at significant costs). Indeed, it is not hard to understand what Verizon's motives are here – to extend the time in which Charter must lease facilities from Verizon at significant monthly costs.

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**DTE-Charter 1-4** Please refer to the testimony of Mike Cornelius at page 13, lines 8-9.  
Please provide any documentation to support this statement.

**RESPONSE:** Although contracts differ on the question of when a party must augment trunks, in practice, trunk augmentations are provided in anticipation of existing trunks reaching one hundred percent (100%) of their capacity at some forecasted point in time. If utilization were measured just prior to the augmentation, utilization would be one hundred percent (100%), or nearly so depending on the accuracy of the forecast. However, if utilization were measured immediately after the augmentation, utilization would be much lower than one hundred percent (100%), the actual value dependent on the trunk group's size relative to the size of the augmentation. The critical point is that within a very short period of time, that being from just before the augmentation to just after it, the utilization measure would have changed significantly.

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**DTE-Charter 1-5** Please refer to the testimony of Mike Cornelius at page 16, lines 23-24. Please explain the phrase "lost the opportunity to provide those best facilities."

**RESPONSE:** The phrase describes the problem raised by Verizon's proposal to condition Charter's ability to request a fiber meet point upon the existence of a certain volume of traffic. If Charter is forced to wait to build the meet point until that time when the parties are exchanging a DS3's worth of traffic, Charter loses both the opportunity to build its network facilities in anticipation of future growth while having to pay the high costs of Verizon's tariffed rates for leased circuits. Networks are not built based upon the amount of traffic *currently* exchanged on the network, but instead on the amount of *anticipated* traffic over that network. If carriers don't build networks based on anticipated traffic growth, and instead only build to current traffic volumes, they will immediately confront capacity problems.

Because under Verizon's proposal Charter would be forced to lease facilities at high special access tariff rates, rather than build efficient meet points, it will have lost the opportunity to establish the most efficient arrangement upon entry into a particular market. The opportunity lost, therefore, is the ability to build the most efficient interconnection arrangement – fiber meet point arrangements – upon entry into a particular market.

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**DTE-Charter 1-6** Please refer to the testimony of Mike Cornelius at page 20, lines 10-13. At what point in time would Charter begin "wasting money" if it built a fiber meet point that was underutilized, taking into account the cost of building and maintaining a fiber meet point and the avoided costs of leasing Verizon's facilities? If such a situation occurred, what would Charter do – continue using the fiber meet point or switch to leasing Verizon facilities?

**RESPONSE:** As Charter witness Mike Cornelius explained in pre-filed testimony, the point at which it is more economical to use a DS3 facility, instead of multiple DS1s, depends on the individual circumstances of a particular interconnection arrangement. However, generally speaking, it would not be in Charter's economic interests to build an optical transport system (i.e. fiber meet point arrangement) if Charter expected to exchange less than seven DS1s worth of traffic, or approximately one-third of the capacity of a DS3.

Notably, that is a situation that has never occurred. However, in an effort to respond the Department's second question in this request, Charter states that if a significant amount of traffic did not materialize over the fiber meet, Charter would continue to increase its marketing efforts in order to increase its subscriber base and thereby expand the amount of traffic exchanged over the fiber meet point. If Charter spent the money for the fiber meet arrangement, it would not abandon the fiber meet arrangement and go back to using leased Verizon facilities.

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**DTE-Charter 1-7** Please refer to the testimony of Mike Cornelius at pages 21-22, lines 25-5. What would total costs be in both LATAs, respectively, when labor, engineering, and other administrative costs are included?

**RESPONSE:** Please see CONFIDENTIAL document attached hereto, Charter CONFIDENTIAL RESPONSE to DTE-Charter 1-7. The documents contained in that CONFIDENTIAL RESPONSE identify Charter's total estimated costs of building a fiber meet point in LATA 128 (Worcester) and LATA 126 (Chicopee).

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**DTE-Charter 1-8** Under Verizon's preferred configuration of using Verizon's nearest wire centers (see testimony of Verizon witness, Willet Richter, at page 8), would Charter be required to deploy greater amounts of fiber than Verizon would?

**RESPONSE:** Because the parties have not agreed on the actual locations of the fiber network interface devices (FNID(s)), which will be used as the designated points of interconnection, it is not possible to accurately answer this Request.

Charter deems Verizon's proposed limitation as unworkable and arbitrary. Moreover, there is no basis in federal law for such limitations. However, Charter is willing to interconnect with Verizon on an equitable basis; that is, we would look for a location roughly midway between the two parties' switches. If either party is required to install new fiber to accommodate this arrangement, they should be required to do so without the arbitrary limitations proposed by Verizon.

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**DTE-Charter 1-9** Please cite to any statutes, rules, court cases, FCC decisions or Department orders that support Charter's position on the issues in dispute. In particular, please cite to any applicable law to support Charter's statements in the testimony of Ted Schremp at page 15, lines 2-7; page 18, lines 15-18; and page 24, lines 12-15.

**RESPONSE:** Legal authority that supports Charter's position on the issues in dispute, and assertion made in Schremp Testimony at 15, lines 2-7:

*Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, First Report and Order on Local Competition, 11 FCC Rcd 15499, ¶¶ 549-554 (1996).

47 C.F.R. 51.5 – Definition of Technical Feasibility.

47 C.F.R. 51.305(a), (c) and (d).

Legal authority that supports Charter's position on the issues in dispute, and assertion made in Schremp Testimony at 18, lines 15-18:

*Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, First Report and Order on Local Competition, 11 FCC Rcd 15499, ¶ 553 (1996).

*Petitions of MediaOne Telecommunications of Massachusetts, Inc. And New England Telephone And Telegraph Company D/B/A Bell Atlantic-Massachusetts For Arbitration, Pursuant To Section 252(B) of The Telecommunications Act of 1996 To Establish An Interconnection Agreement*, D.T.E. 99-42/43-A, 2001 Mass. PUC LEXIS 12, at \*17-19 (Mass. DTE 2001).

*Petitions of MediaOne Telecommunications of Massachusetts, Inc. And New England Telephone And Telegraph Company D/B/A Bell Atlantic-Massachusetts For Arbitration, Pursuant To Section 252(B) Of The Telecommunications Act Of 1996 To Establish An Interconnection Agreement*, D.T.E. 99-42/43-A, 2001 Mass. PUC LEXIS 25, at \*23-25 (Mass. DTE 2001).

Legal authority that supports Charter's position on the issues in dispute, and assertion made in Schremp Testimony at 24, lines 12-15:

47 C.F.R. §§ 51.703(b); 51.709(b).

*In the Matter of Unified Intercarrier Compensation Rulemaking,*  
Notice of Proposed Rulemaking, 16 FCC Rcd 9610, at ¶ 70 (2001).

*TSR Wireless v. US West Communications,* Memorandum Opinion  
and Order, 15 FCC Rcd 11166 at ¶¶ 18, 40 (2000).

*MCI Metro Access Transmission Servs. v. BellSouth*  
*Telecommunications, Inc.,* 352 F.3d 872 (4th Cir. 2003).

*Southwestern Bell Telephone Co. v. PUC of Texas,* 348 F.3d 482  
(5th Cir. 2003).

**RESPONDENT:** Counsel of record for Charter Fiberlink, LLC

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**DTE-Charter 1-10** Please refer to the testimony of Verizon witness, Willet Richter, at page 15, lines 9-11. Is Verizon correct that its proposal for issue 5(d) is the only exception to the draft agreement's allocation of costs for moves or changes to the fiber meet arrangements?

**RESPONSE:** No. Verizon's proposal is that the costs of moves or changes to the fiber meet point arrangement will be borne by the party that initiates or causes such move or change. Charter is the party that is proposing an exception to that general principle. Charter proposes that the party causing the move or change be responsible for the cost, *except* where the move or change is caused by an order of a local government, municipality, etc. In those limited circumstances, where the move or changes is made because of a governmental order or directive, then both parties will be responsible for the costs associated with moving or changing their portion of the fiber meet point arrangement.

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## CERTIFICATE OF SERVICE

I, Debra Sloan, hereby certify that on August 28, 2006, I served a true and correct copy of the foregoing *Response of Charter Fiberlink MA-CCO, LLC to The Department of Telecommunications and Energy's First Set of Information Requests* via Federal Express and electronic copy upon the following:

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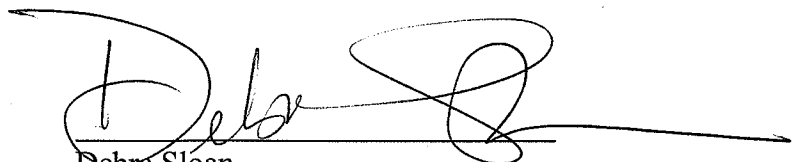
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